

HENG WANG & ASSOCIATES, P.C.

Heng Wang, Esq. (HW 0786)
 305 Broadway, Suite 1000
 New York, NY 10007
 Tel: (212) 203-5231
 Fax: (212) 203-5237
 heng.wang@wanggaolaw.com

*Attorney for Plaintiff, FLSA Collective Plaintiffs
 And the Rule 23 Class*

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK**

ABDUL A. ROZIER, on behalf of himself and all
 others similarly situated,

Plaintiffs,

v.

OLME.US, LLC, d/b/a DUTCH EXPRESS,
 DUTCH EXPRESS INC, d/b/a DUTCH EXPRESS,
 DUTCH EXPRESS, LLC, d/b/a DUTCH EXPRESS
 DUTCH EXPRESS II, LLC, d/b/a DUTCH
 EXPRESS, MARCUS HOED, ARIELLA AZOGUI,
 AVIV SISO, JOHN DOE 1-5, and COMPANY
 ABC 1-5

Defendants.

CIVIL ACTION

Case No.: 1:20-cv-548

**COLLECTIVE ACTION & CLASS
 ACTION FIRST AMENDED
 COMPLAINT**

JURY TRIAL DEMANDED

Plaintiff ABDUL A. ROZIER, by and through his undersigned counsel, by way of Complaint
 against Defendants OLME.US, LLC, d/b/a DUTCH EXPRESS, DUTCH EXPRESS INC, d/b/a
 DUTCH EXPRESS, DUTCH EXPRESS, LLC, d/b/a DUTCH EXPRESS, DUTCH EXPRESS II, LLC,
 d/b/a DUTCH EXPRESS II, LLC, d/b/a DUTCH EXPRESS (collectively, "Dutch Express"),
 MARCUS HOED ("Hoed"), ARIELLA AZOGUI ("Azogui"), AVIV SISO ("Siso"), John Doe 1-5,
 Company ABC 1-5, state as follows:

INTRODUCTION

1. Plaintiff brings this lawsuit because he is entitled to unpaid wages pursuant to the Fair Labor Standards Act (hereinafter, "FLSA") and the New York Labor Law (hereinafter, "NYLL").
2. Among other things, Defendants failed to pay minimum wage, and illegally withheld wages and tips earned by the workers, including Plaintiff.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. 1331 and 1337 and supplemental jurisdiction over Plaintiff's state law claims.
4. In addition, the Court has jurisdiction over Plaintiff's claims under the FLSA pursuant to 29 U.S.C. 216(b).
5. Venue is proper in this district pursuant to 28 U.S.C. 1391 because Plaintiff was employed by Defendants in this district, and thus all transgressions occurred in this district.

PARTIES

6. Plaintiff is an individual who resides in the City of New York.
7. Defendant OLME.US, LLC, d/b/a DUTCH EXPRESS is a limited liability company that conducts business in the State of New York.
8. Defendant DUTCH EXPRESS INC, d/b/a DUTCH EXPRESS, is a limited liability company that conducts business in the State of New York.
9. Defendant DUTCH EXPRESS, LLC, d/b/a DUTCH EXPRESS is a limited liability company that conducts business in the State of New York.
10. Defendant DUTCH EXPRESS II, LLC, d/b/a DUTCH EXPRESS is a limited liability company that conducts business in the State of New York.

- 1 11. Defendants Hoed, Azogui, and Siso operate and control Dutch Express's day-to-day
- 2 operations and management.
- 3 12. John Doe 1-5 are fictitious names of the individuals associated with Defendants, whose true
- 4 names are unknown.
- 5 13. John Doe 1-5 are fictitious names of the entities associated with Defendants, whose true
- 6 names are unknown.
- 7 14. Dutch Express has been sued multiple times for violations of the FLSA and the NYLL.
- 8 15. Upon information and belief, Dutch Express started to use the entity name OLME.US, LLC in
- 9 order to escape from liability under the labor law statutes.
- 10 16. All corporate defendants conducted or conduct business under the name of Dutch Express.
- 11 17. Corporate defendants are alter ego of each other, and should be all held liable.
- 12
- 13

14 FACTUAL ALLEGATIONS

- 15 18. Dutch Express is a contractor of Amazon which provides courier services for Amazon Prime
- 16 Now.
- 17 19. Amazon Prime Now is a website and mobile application where customers can place orders
- 18 for fast same-day delivery.
- 19 20. Plaintiff was hired by Dutch Express as a foot messenger on December 6, 2019, and currently
- 20 is still being employed by the latter.
- 21 21. Plaintiff's job duties include performing delivery work for Amazon Prime Now.
- 22 22. Plaintiff was informed by Defendants that he would be paid \$15/hour.
- 23 23. Plaintiff worked 5 days a week.
- 24 24. Plaintiff was paid on a weekly basis.
- 25
- 26
- 27
- 28

1 25. Defendants would give the workers, including Plaintiff, their work schedule for the
2 following week on Fridays, through a phone application Humanity.

3 26. The work schedule given to Plaintiff was either 5:30 am – 1:30 pm, or 6:30 am – 2:30 pm, for 8
4 hours.

5 27. Plaintiff would report to work pursuant to the work schedule provided to him ahead of time.

6 28. The workers, including Plaintiff, were required to punch in when they reported to work, and
7 punch out when they left for the day.

8 29. Upon arrival, the workers, including Plaintiff, were required to wait for the packages given
9 to them for delivery.

10 30. However, pursuant to their company-wide policy, Defendants have not paid the workers,
11 including Plaintiff, for their waiting time.

12 31. When the first package was given to a worker, the worker would scan it with a phone
13 application Amazon Flex, which would create a time entry.

14 32. Defendants calculated the workers' pay based on this time entry, and failed to pay for their
15 substantial waiting time.

16 33. The price paid by customers through Amazon Prime Now, by default, includes a tip.

17 34. However, Defendants retained the tips, in whole or in part, and failed to provide to the tips
18 to the workers, including Plaintiff.

19 35. The workers, including Plaintiff, use subway on a daily basis to perform delivery work in the
20 City of New York.

21 36. However, Defendants have failed to pay for the workers' MetroCard expenses.

22 37. In fact, Defendants directly deducted MetroCard costs from the workers' paychecks.

23 38. Defendants failed to pay the workers, including Plaintiff, for all hours worked.

1 39. Defendants Hoed, Azogui, and Siso are owners of the corporate defendants. They each
2 excised operation control as it relates to all employees and former employees, including
3 Plaintiff, FLSA Collective Plaintiffs and the Rule 23 Class.

4 40. Defendants exploited the powerless delivery workers, including many immigrants and
5 homeless people who are afraid of speaking out, for profits.
6

7 **CLASS AND COLLECTIVE ALLEGATIONS**

8 41. Plaintiff brings FLSA claims on behalf of himself and all similarly situated persons who work
9 or have worked for the defendants who elect to opt in to this action (the "FLSA Collective").

10 42. The defendants are liable under the FLSA for, inter alia, failing to properly compensate
11 Plaintiff, and as such, notice should be sent to the FLSA Collective. There are many similarly
12 situated current and former employees of Defendants who have been underpaid in violation
13 of the FLSA who would benefit from the issuance of a court-supervised notice of the present
14 lawsuit and the opportunity to join in the present lawsuit. Those similarly situated
15 employees are known to Defendants, are readily identifiable, and can be located through
16 Defendants' records.
17

18 43. Plaintiff also brings this action on behalf of himself and a class of persons under Rule 23 of
19 the Federal Rules of Civil Procedures.
20

21 44. The persons in the Rule 23 Class identified above are so numerous that joinder of all
22 members is impracticable. Although the precise number of such persons is unknown, the
23 facts on which the calculation of that number can be based are presently within the sole
24 control of Defendants.
25

26 45. The claims of Plaintiff are typical of the claims of the Rule 23 Class.

27 46. Plaintiff will fairly and adequately protect the interests of the Rule 23 Class.
28

1 47. There are questions of law and fact common to the Rule 23 Class that predominate over any
2 questions solely affecting individual members of the Rule 23 Class, including but not limited
3 to:

- 4 (a) Whether Defendants have failed to keep true and accurate time records for all
5 hours worked by Plaintiffs and the Rule 23 Class;
6
7 (b) What proof of hours worked is sufficient where employer fails in its duty to
8 maintain true and accurate time records;
9
10 (c) Whether Defendants have failed to compensate Plaintiffs and the Rule 23 Class
11 for work performed in excess of 40 hours per workweek with proper wages as
12 required by law;
13
14 (d) Whether Defendants have failed to make spread of hours payments pursuant to
15 the NYLL;
16
17 (e) Whether Defendants have violated the statement and notice requirements under
18 the WTPA;
19
20 (f) The nature and extent of Rule 23 Class-wide injury and the appropriate measure
21 of damages for the class; and
22

23 48. The claims of Plaintiff are typical of the claims of the Rule 23 Class they seek to represent.

24 Plaintiff and the Rule 23 Class work or have worked for Defendants in its wholesale business
25 and have not been paid proper wages for the hours that they have worked. Defendants have
26 acted and refused to act on grounds generally applicable to the Rule 23 Class, thereby
27 making declaratory relief with respect to the Rule 23 Class appropriate.

28 49. Plaintiff has retained counsel competent and experienced in labor and employment litigation.

1 50. A class action is superior to other available methods for the fair and efficient adjudication of
2 this litigation – particularly in the context of a wage and hour litigation like the present
3 action, where individual plaintiffs may lack the financial resources to vigorously prosecute a
4 lawsuit in federal court against a company. The members of the Rule 23 Class have been
5 damaged and are entitled to recovery as a result of Defendants’ common and uniform
6 policies, practices, and procedures. Although the relative damages suffered by individual
7 Rule 23 Class Members are not *de minimis*, such damages are small compared to expense and
8 burden of individual prosecution of this litigation. In addition, class treatment is superior
9 because it will obviate the need for unduly duplicative litigation that might result in
10 inconsistent judgment against Defendants’ practices.
11

12
13 51. It has been Defendants’ persistent policy, pattern and practice to fail to pay its workers
14 wages they are entitled.

15 52. As part of its regular business practice, Defendants have intentionally, willfully, and
16 repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA and the New
17 York Labor Law. This pattern and practice include but is not limited to:

- 18 (a) Willfully failing to accurately record all of the time that its employees, including
19 Plaintiff and the Class Members, have worked for the benefit of the Defendants;
20 (b) Willfully failing to keep accurate employment records as required by the FLSA
21 and the NYLL;
22 (c) Willfully failing to pay Plaintiff and the Class Members for all hours worked;
23 (d) Willfully failing to retain tips that belong to Plaintiff and the Class Members;
24 (e) Willfully failing to pay for MetroCards used by Plaintiff and the Class Members
25 for the delivery work they performed for Defendants;
26
27
28

1 (f) Willfully failing to meet the requirements under the WTPA.

2 53. Defendants' unlawful conduct has been widespread, repeated and consistent.

3
4 **COUNT I**
5 **Unpaid Wages Under the FLSA**

6 54. Plaintiffs realleges and incorporates by reference all allegations in the preceding paragraphs
7 as if fully set forth herein.

8 55. Plaintiff and other similarly situated employees/former employees worked more hours than
9 those paid for by Defendants.

10 56. Defendants illegally withheld wages already earned by Plaintiff and other similarly situated
11 employees/former employees.

12 57. Defendants willfully failed to pay Plaintiff and other similarly situated workers wages for
13 hours worked in violation of 29 U.S.C. 206(a).

14
15
16 **COUNT II**
17 **Unpaid Wages Under the NYLL**

18 58. Plaintiff realleges and incorporates by reference all allegations in the preceding paragraphs
19 as if fully set forth herein.

20 59. At all times relevant to this action, Plaintiff and other similarly situated employees/former
21 employees were employed by Defendants within the meaning of New York Labor Law §§2
22 and 651.

23 60. Plaintiff and other similarly situated workers worked more hours than those paid for by
24 Defendants.

1 61. Defendants illegally withheld wages already earned by Plaintiff and other similarly situated
2 workers.

3 62. Defendants failed to pay Plaintiff and other similarly situated workers wages for hours
4 worked in violation of New York Labor Law Article 6.
5

6
7 **COUNT III**
8 **Minimum Wage Under the FLSA**

9 63. Plaintiff realleges and incorporates by reference all allegations in the preceding paragraphs
10 as if fully set forth herein.

11 64. Defendants failed to pay minimum wages to Plaintiff and other similarly situated workers,
12 in violation of the FLSA.

13 65. As a result, Plaintiff and other similarly situated workers suffered damages.
14

15
16 **COUNT IV**
17 **Minimum Wage Under the NYLL**

18 66. Plaintiffs realleges and incorporates by reference all allegations in the preceding paragraphs
19 as if fully set forth herein.

20 67. Defendants failed to pay minimum wages to Plaintiff and other similarly situated workers,
21 in violation of the NYLL.

22 68. As a result, Plaintiffs and other similarly situated workers suffered damages.
23

24 **COUNT V**
25 **Wage Theft Prevention Act under the New York Labor Law**
26

1 69. Plaintiff realleges and incorporates by reference all allegations in the preceding paragraphs
2 as if fully set forth herein.

3 70. Defendants willfully violated Plaintiff's rights by failing to provide him with proper wage
4 notices and wage statements as required by the Wage Theft Prevention Act. The wage
5 notices and wage statements provided to Plaintiff were incorrect and misleading.
6

7 71. Defendants' such illegal practices also applied to other similarly situated workers.
8

9 **COUNT VI**
10 **Unlawful Retained Gratuities Under the NYLL**

11 72. Plaintiff realleges and incorporates by reference all allegations in the preceding paragraphs
12 as if fully set forth herein.

13 73. Defendants unlawfully retained tips paid by customers to Plaintiff and other similarly
14 situated workers, in violation of the N.Y. Lab. Law §196-d.
15

16 **COUNT VII**
17 **Failure to Reimburse Expenses under the FLSA**

18 74. Plaintiff realleges and incorporates by reference all allegations in the preceding paragraphs
19 as if fully set forth herein.
20

21 75. Defendants failed to reimburse expenses for the MetroCards used by Plaintiff and other
22 similarly situated workers, in violation of 29 U.S.C. §206(a) and 29 C.F.R. §531.35.
23

24 **COUNT VIII**
25 **Failure to Reimburse Expenses under the NYLL**
26
27
28

76. Plaintiff realleges and incorporates by reference all allegations in the preceding paragraphs as if fully set forth herein.

77. Defendants failed to reimburse expenses for the MetroCards used by Plaintiff and other similarly situated workers, in violation of N.Y. Lab. Law §§193 and 198-(b)(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

1. Issuance of a declaratory judgment that the practices complained of in this Complaint are unlawful under the FLSA and the NYLL;
2. Injunction enjoining Defendants from further unlawful labor law practices;
3. Compensatory damages;
4. Liquidated damages;
5. Prejudgment interest;
6. Post-judgment interest;
7. Attorney's fees and costs;
8. Such other relief as this Court shall deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all questions of fact raised by the Complaint.

1
2 Dated: January 24, 2020
3
4

/s/Heng Wang

5 By: Heng Wang (HW0786)
6 Heng Wang & Associates, P.C.
7 305 Broadway, Suite 1000
8 New York, NY 10007
9 Tel: (212) 203-5231
10 Fax: (212) 203-5237

11 heng.wang@wanggaolaw.com
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONSENT TO SUE UNDER THE FAIR LABOR STANDARDS ACT

I consent to be a plaintiff in the instant lawsuit to collect unpaid wages under the Fair Labor Standards Act and the applicable state laws.

Dated: 1/10/2020

Abdul Rozic
ABDUL ROZIC

**NOTICE OF INTENTION TO ENFORCE
SHAREHOLDER/MEMBERS LIABILITY FOR SERVICES RENDERED**

To: Marcus Hoed, Ariella Azogui, and Aviv Siso

PLEASE TAKE NOTICE THAT pursuant to the provisions of Section 630 of the Business Corporation Law of New York and Section 609 of the Limited Liability Company Law of New York, you are hereby notified that the plaintiffs and others similarly situated intend to charge you and hold you personally liable, jointly and severally, as one of the ten largest shareholders and/or members of OLME.US, LLC, DUTCH EXPRESS, LLC, DUTCH EXPRESS INC, d/b/a DUTCH EXPRESS, and DUTCH EXPRESS II, LLC for all debts, wages, and/or salaries due and owing to them as laborers, servants, and/or employees of the said corporation/LLC for services performed by them for the said corporation/LLC within the six (6) years preceding the date of this notice and have expressly authorized the undersigned, as their attorney, to make this demand on their behalf.

Dated: January 24, 2020
New York, NY

/s/ Heng Wang
By: Heng Wang (HW0786)
Heng Wang & Associates, P.C.
305 Broadway, Suite 1000
New York, NY 10007
Tel: (212) 513-1183
Fax: (646) 572-8998

heng.wang@wanggaolaw.com

*Attorneys for Plaintiffs, proposed FLSA Collective
and potential Rule 23 Class*

**DEMAND BY EMPLOYEES TO INSPECT SHARE RECORDS/MEMBERS AND MINUTES
PURSUANT TO SECTION 624 OF THE NEW YORK STATE BUSINESS CORPORATION
LAW**

To: OLME.US, LLC, d/b/a DUTCH EXPRESS,
DUTCH EXPRESS INC, d/b/a DUTCH EXPRESS,
DUTCH EXPRESS, LLC, d/b/a DUTCH EXPRESS
DUTCH EXPRESS II, LLC, d/b/a DUTCH EXPRESS,

PLEASE TAKE NOTICE THAT the plaintiffs and others similarly situated as employees of the above corporation and LLC who intend to demand, pursuant to the provisions of Section 630 of the Business Corporation Law of New York, and Section 609 of the Limited Liability Company Law of New York, payment of debts, wages, and/or salaries due and owing to them as laborers, servants, and/or employees of the above corporation and LLC for services performed by them for the above corporation and LLC within the six (6) years preceding the date of this notice from the ten largest shareholders of the above corporation and LLC, and who have expressly authorized the undersigned, as their attorney, to make this demand on their behalf.

HEREBY DEMAND the right to examine, in person or by agent or attorney, during usual business hours, the minutes of the proceedings of the shareholders and records of shareholders of the above corporation/LLC and to make extracts there from on or after five (5) days from receipt of this notice.

Dated: January 24, 2020

/s/Heng Wang
By: Heng Wang (HW0786)
Heng Wang & Associates, P.C.
305 Broadway, Suite 1000
New York, NY 10007
Tel: (212) 513-1183
Fax: (646) 572-8998

heng.wang@wanggaolaw.com

*Attorneys for Plaintiffs, proposed FLSA Collective
and potential Rule 23 Class*

305 Broadway, Suite 1000
New York, NY 10007
Telephone: (212) 203-5231
Facsimile: (212) 203-5237

Knowledge, Focus, Expertise

**HENG WANG &
ASSOCIATES P.C.**

January 24, 2020

VIA ECF FILING & THEN VIA PROCESS SERVER

OLME.US, LLC, d/b/a DUTCH EXPRESS,
DUTCH EXPRESS INC, d/b/a DUTCH EXPRESS,
DUTCH EXPRESS, LLC, d/b/a DUTCH EXPRESS
DUTCH EXPRESS II, LLC, d/b/a DUTCH
EXPRESS, MARCUS HOED, ARIELLA AZOGUI,
AVIV SISO, JOHN DOE 1-5, and COMPANY
ABC 1-5
Dutch Express Inc.
621 West 55th St.
New York City, New York 10019

RE: Abdul A. Rozier v. OLME.US, LLC, *et al.*
Case No.: 1:20-cv-548
LITIGATION HOLD NOTICE

Dear All Defendants,

We write to you concerning the lawsuit filed against each of you in the United States District Court, Southern District of New York wherein the Plaintiff Abdul A. Rozier and all similarly situated persons who work or have worked for the defendants seek recovery of unpaid wages, failure to reimburse expenses , and related relief, pursuant to the federal and state wage and hour laws. Among other things, the Plaintiff has asserted that you have failed to compensate her for all hours worked.

This lawsuit will be governed by the Federal Rules of Civil Procedure, which apply to all lawsuits filed in United States federal courts such as the one in the Southern District of New York. Pursuant to the Federal Rules of Civil Procedure, every party to a lawsuit has a duty to preserve all evidence relevant to this legal dispute. In order to comply with the Federal Rules of Civil Procedure, it is important that you place a "Litigation Hold" on any information and/or materials that are potentially relevant to the Plaintiff's claims by (1) identifying and segregating any such potentially relevant information and/or materials; and (2) suspending the application of any routine and/or automatic document destruction practices that you may have as to any such potentially relevant information or materials. Your failure to properly enact a Litigation Hold and preserve the potentially relevant information and/or materials may lead to the Plaintiff's application for sanctions, which may include, but not limited to, the imposition of monetary sanctions, the direction that negative inferences be drawn based upon the unavailability of the potentially relevant information and/or materials, the

creation of separate causes of action for fraudulent concealment of evidence and/or spoliation of evidence, or the dismissal of your Answer to the Complaint resulting in a default decision on the Plaintiff's behalf, and potentially on behalf of a collective and/or class of other plaintiffs.

The duty to preserve evidence is broad and extends to all documents, regardless of whether the document is stored electronically (such as emails, computer files, or other electronic records and files) or in hard-copy and regardless of the type of document. For example, reports, spreadsheets, photographs and videotapes are all considered documents that must be preserved. Furthermore, the duty to preserve this documentary evidence extends to all documents in existence as of the time you reasonable anticipated this litigation.

Based on the claims asserted in the Complaint, all information and/or materials concerning the Plaintiff through and including the termination of her employment to the present, as well as all information and/or materials concerning your pay practices concerning ALL employees and former employees in the past six (6) years are potentially relevant to these disputes.

To ensure that all relevant documents are preserved, you should communicate directly with all employees who have possession or control of potentially relevant evidence, including but not limited to personnel who deal with physical and/or electronic files retention, deletion, and archiving. You should advise each of these employees to preserve any relevant documents in their custody. Furthermore, you should advise all such persons that any regularly scheduled and/or automatic deletion of email or other electronic documents must be discontinued with respect to any relevant data. In addition, any document destruction (such as shredding of documents) must cease with respect to any relevant documents. All relevant documents, both electronic and paper, must be preserved for the duration of this litigation.

Please do not hesitate to contact us should you have any questions or concerns involving these obligations.

Sincerely,

/s Heng Wang
HENG WANG & ASSOCIATES, P.C.
By: Heng Wang, Esq.
305 Broadway, Suite 1000
New York, NY 10007
Tel: (212) 513-1183
Heng.wang@wanggaolaw.com
Attorney for Plaintiff